

Unofficial translation by Gisha, for inquiries info@gisha.org

Date: February 9, 0020

To
Mr. Naftali Bennett,
Minister of Defense
By Fax No. 03-6962757

To
Mr. Kamil Abu Rokon,
Coordinator of Government Activities
By Fax No. 03-6976306

Dear Sir,

-Urgent-

Re: Reversal of decision to revoke trader permits as a punitive measure

On behalf of Gisha - Legal Center for Freedom of Movement, I hereby urgently contact you with respect to the matter in reference, as follows:

1. On the night of February 1, 2020, an announcement was posted on the Facebook page of the Coordinator of Government Activities in the Territories (COGAT) according to which Israel had decided to implement punitive measures against the Gaza Strip. An article on the Haaretz daily newspaper's website, published close to midnight, indicated that the measures include a reduction of 500 trader permits for exiting Gaza to travel to Israel and the West Bank. These measures were to take effect immediately and are still in effect at the time of writing.
2. Indeed, according to information we have obtained, hundreds of traders with valid travel permits were informed the very next day that their permits were no longer valid. Our inquiries reveal that records kept by the Israeli side may specify "security preclusion" as the grounds for the permit revocation.
3. The punitive measures were reportedly implemented "following the continued rocket fire and launching of incendiary balloons." Insofar as the record of traders whose permits have been revoked as part of the sweeping measure now includes a "security preclusion," the preclusion is unrelated to the traders themselves.
4. The decision to revoke the permits of a certain group of trader-permit holders on an arbitrary basis and for extraneous purposes causes serious harm to the affected traders. In addition to the direct damage to their businesses, livelihoods and their right to freedom of occupation, the permit revocation also damages the reputations of the affected traders.
5. Recently, in proceedings in petitions concerning trader permits, ISA and CLA officials clarified that an "indication of a potential for risk" was sufficient to deny a trader permit application. It follows that the revoked permits had been issued to residents who had passed the individual screening conducted by the ISA impeccably.

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6. The affected traders are in no way connected to the security situation. This too indicates clearly that the measure is punitive and intended to apply pressure on third parties inside the Strip.
7. Moreover, given the manner in which permit trader applications are processed by ISA and CLA officials, there is real concern that the arbitrary recording of a “security preclusion” for hundreds of traders will reduce their chances of obtaining trader permits in the future.
8. Following the most recent punitive measures, hundreds of traders are now barred from traveling to Israel, the West Bank and abroad. We note that these individuals are traders who have relied on permits granted to them following a grueling bureaucratic process. Some of them had waited for a permit for months, if not longer.
9. Using a person as a means to an end unrelated to the person him or herself– be it another individual or another group - constitutes a violation of the person’s constitutional right to human dignity. As stated by Aharon Barak, dignity is founded on a recognition of the individual’s physical and mental integrity, their humanity, their value as a person, all of these **irrespective of their utility to others. Dignity presupposes a free human being, an end in its own right rather than a means to achieve ends sought by the public or by other individuals** (Aharon Barak, Human Dignity as a Constitutional Right, HaPraklit 41, 271 (1994)).
10. Moreover, this wrongful conduct has grave repercussions for all Gaza residents. Any harm to the civilian fabric and to Gaza’s already beleaguered economy impacts not only traders, but, through a chain reaction, the entire economy of the Strip.
11. Recently, collective punishment measures by Israel against Gaza’s civilian population have multiplied. They have included: crossing closures, fishing bans, decrease and full stoppage of fuel supply into the Strip. We have repeatedly cautioned you that these are drastic and injurious measures and requested that you desist from this practice that constitutes a breach of the law and of Israel’s obligations, as detailed below. Nevertheless, Israel continues to implement similar measures, punishing the civilian population in a most grievous and wrongful manner.
12. As noted, the decision in this matter was made suddenly and implemented immediately with no individual screening process. Additionally, it is unknown and unclear how long the decision will remain in effect. This increases the sense that Gaza residents, who are already experiencing instability resulting from Israel’s control of the crossings and the sudden, arbitrary decisions it makes regarding their affairs, are being subjected to harassment.
13. The duty to allow members of the civilian population to lead a normal life is enshrined in the provisions of Article 43 of the Regulations annexed to The Hague Convention respecting the Laws and Customs of War on Land of 1907. Normal life includes living in dignity the ability to continue making a living. Additionally, Article 27 of the Fourth Geneva Convention (1949) stipulates a duty to protect the dignity of local residents.

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14. According to these laws, Israel has a duty to refrain from harming the civilian population of the Gaza Strip, and a **positive duty to see to its humanitarian needs and uphold public order and safety** (see HCJ 4764/04 **Physicians for Human Rights Israel et al. v. Commander of the IDF Forces in Gaza**, IsrSC 58(5) 385, 393 (2004)). In the case at hand, denying permits on which traders relied for their business hurts their reputation and their businesses, therefore impacting the workplaces of many additional residents. Therefore, the decision undermines the normal life of Gaza's residents.
15. We stress that decisions such as the one to arbitrarily revoke permits constitute a blatant violation of Israel's obligations towards the civilian population of the Gaza Strip, a serious infringement on their rights and on their ability to lead a normal life. This is an unlawful decision that clearly defies the law, the jurisprudence of the Supreme Court, and Israel's self-declared commitments. The decision results in an unjustified, unreasonable and disproportionate violation of numerous traders' rights to movement and to livelihood, indirect harm to the many individuals they employ and a disruption of commerce and industry in the Gaza Strip.
16. Moreover, drafting an arbitrary list of merchants for the purpose of permit revocation constitutes **prohibited collective punishment** of the entire civilian population of the Gaza Strip (See Art. 50 of The Hague Regulations; Art. 33 of the Fourth Geneva Convention (1949) and Art. 75(2) of the First Additional Protocol of the Geneva Conventions). This decision also contravenes administrative law, given, in part, that it is not based on proper facts and evinces a failure to consider its destructive ramifications and impact on the population of the Gaza Strip at large.

Given all the above, we request that you rescind the decision in reference forthwith, reinstate the revoked trader permits and take action to erase any records referencing a security preclusion against them, inasmuch as such records were made in light of this decision.

Sincerely,

[signed]
Osnat Cohen-Lifshitz, Adv.

[signed]
Moria Friedman Sharir, Adv.